

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

ALBERT E. PAPPIN, JR.,	)	1:05-cv-00022-REC-LJO-P
	)	
Plaintiff,	)	<b>FINDINGS AND RECOMMENDATIONS</b>
	)	<b>RECOMMENDING DISMISSAL OF</b>
vs.	)	<b>ACTION FOR FAILURE TO OBEY A</b>
	)	<b>COURT ORDER AND FAILURE TO</b>
JEANNE S. WOODFORD, et al.,	)	<b>STATE A CLAIM UPON WHICH</b>
	)	<b>RELIEF MAY BE GRANTED</b>
Defendants.	)	
_____	)	(Doc. 12)

Plaintiff Albert E. Pappin, Jr. ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

By order filed July 22, 2005, the court found that plaintiff's complaint failed to state any claims for relief against the named defendants. The court dismissed plaintiff's complaint and ordered plaintiff to file an amended complaint within thirty (30) days from the date of service of that order. More than thirty days have passed and plaintiff has not filed an amended complaint or otherwise responded to the court's order.<sup>1</sup>

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<sup>1</sup> The United States Postal Service returned the order served on plaintiff on August 15, 2005, as undeliverable. A notation on the envelope stated: RETURN TO SENDER - DECEASED.

1 Local Rule 11-110 provides that "failure of counsel or of a  
2 party to comply with these Local Rules or with any order of the  
3 Court may be grounds for the imposition by the Court of any and all  
4 sanctions . . . within the inherent power of the Court." District  
5 courts have the inherent power to control their dockets and "in the  
6 exercise of that power, they may impose sanctions including, where  
7 appropriate . . . dismissal of a case." Thompson v. Housing Auth.,  
8 782 F.2d 829, 831 (9<sup>th</sup> Cir. 1986). A court may dismiss an action,  
9 with prejudice, based on a party's failure to prosecute an action,  
10 failure to obey a court order, or failure to comply with local  
11 rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir.  
12 1995) (dismissal for noncompliance with local rule); Ferdik v.  
13 Bonzelet, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for  
14 failure to comply with an order requiring amendment of complaint);  
15 Carey v. King, 856 F.2d 1439, 1440-41 (9<sup>th</sup> Cir. 1988) (dismissal for  
16 failure to comply with local rule requiring pro se plaintiffs to  
17 keep court apprised of address); Malone v. U.S. Postal Service, 833  
18 F.2d 128, 130 (9<sup>th</sup> Cir. 1987) (dismissal for failure to comply with  
19 court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9<sup>th</sup> Cir.  
20 1986) (dismissal for failure to lack of prosecution and failure to  
21 comply with local rules).

22 In determining whether to dismiss an action for lack of  
23 prosecution, failure to obey a court order, or failure to comply  
24 with local rules, the court must consider several factors: (1) the  
25 public's interest in expeditious resolution of litigation; (2) the  
26 court's need to manage its docket; (3) the risk of prejudice to the  
27 defendants; (4) the public policy favoring disposition of cases on  
28 their merits; and, (5) the availability of less drastic

1 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at  
2 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61;  
3 Ghazali, 46 F.3d at 53.

4 In the instant case, the court finds that the public's  
5 interest in expeditiously resolving this litigation and the court's  
6 interest in managing the docket weigh in favor of dismissal. The  
7 third factor, risk of prejudice to defendants, also weighs in favor  
8 of dismissal, since a presumption of injury arises from the  
9 occurrence of unreasonable delay in prosecuting an action.  
10 Anderson v. Air West, 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth  
11 factor -- public policy favoring disposition of cases on their  
12 merits -- is greatly outweighed by the factors in favor of  
13 dismissal discussed herein. Finally, a court's warning to a party  
14 that his failure to obey the court's order will result in dismissal  
15 satisfies the "consideration of alternatives" requirement. Ferdik  
16 v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson,  
17 779 F.2d at 1424. The court's order of July 22, 2005, requiring  
18 plaintiff to file an amended complaint, expressly stated: "If  
19 plaintiff fails to file an amended complaint in compliance with  
20 this order, the court will recommend that this action be dismissed,  
21 without prejudice, for failure to state a claim upon which relief  
22 may be granted." Thus, plaintiff had adequate warning that  
23 dismissal would result from non-compliance with the court's order.

24 Accordingly, it is HEREBY RECOMMENDED that this action be  
25 DISMISSED for plaintiff's failure to obey the court's order of July  
26 22, 2005, and for the reasons set forth therein, namely, for  
27 failure to state a claim upon which relief may be granted.

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1        These Findings and Recommendations are submitted to the United  
2 States District Judge assigned to the case, pursuant to the  
3 provisions of Title 28 U.S.C. § 636(b)(1). Within **fifteen (15)**  
4 **days** after being served with these Findings and Recommendations,  
5 plaintiff may file written objections with the court. Such a  
6 document should be captioned "Objections to Magistrate Judge's  
7 Findings and Recommendations." Plaintiff is advised that failure  
8 to file objections within the specified time may waive the right to  
9 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
10 (9th Cir. 1991).

11  
12 IT IS SO ORDERED.

13 **Dated: September 6, 2005**  
14 b9ed48

/s/ Lawrence J. O'Neill  
UNITED STATES MAGISTRATE JUDGE